CHILDREN IN CONFLICT WITH LAW UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – A SOCIO-LEGAL STUDY

Introduction

Juvenile justice system has been one of the vastly debated and onerous responsibility of a welfare State. Countries have adopted various schemes for the protection of children.[1] Theories have been put forth, but largely on the rights-based approach and state intervention for welfare of the child, developed by the western nations, for dealing with the juveniles.[2] India has also adopted this scheme of rights-based approach for the protection of children in conflict with law and child in the need of protection.[3]

Child in conflict with law *means a child who is alleged or found to have committed an offence and who has not completed age of 18 years as on the date of commission of the offence*.[4] Juvenile justice system adjudicates the offences committed by a juvenile. In its more comprehensive sense, the system develops policies formulates laws, regulations, establishes the institutionalised mechanism, and provides for the support in terms of resources for effectively protecting and fostering the interests of children. The juvenile delinquents in terms of their rights are treated alike the adult criminals. However, a cardinal deviation lies in the fact that these children more than being seen as criminals are regarded as the entities that require attention and whose mind can be easily moulded for better future. Therefore, the juvenile justice system all across the globe has come to see the *best interest of the* child as the underlying facet of adjudicating juvenile delinquency. The rights which children have at the time of adjudication of their cases in the courts or before the Juvenile Justice Board is prescribed by the Beijing Rules, 1985 and also regulated by the criminal procedure of the country.

The Constitutional guarantee of social justice inclusive of children (especially delinquents and those in need of care and protection) manifested in a statutory form after a decade of the Constitution's coming into force. The Children Act, 1960[5] was the first legislation to delineate various aspects of child welfare and modes of dealing with the delinquent children. The act assimilated the components of *care, welfare, maintenance, training, education, rehabilitation*

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[1] Scott H. Decker, and Nerea Marteache (eds.), INTERNATIONAL HANDBOOK ON JUVENILE JUSTICE, (2017). See also John T. Whitehead and Steven P. Lab, JUVENILE JUSTICE: AN INTRODUCTION, pp. – 55-56 (9th edn., 2018).
[2] *Id.* Whitehead and Lab, pp. - 46, 48-49.
[3] Preamble to the Juvenile Justice (Care and Protection) Act, 2015 (Act No. 2 of 2016).
[4] Clause (13), S. 2, Juvenile Justice (Care and Protection) Act, 2015 (Act No. 2 of 2016).
[5] The Children Act, Act No. 60 of 1960 (Repealed).

of neglected or delinquent children…[6]. The Act of 1960 had limited scope of its applicability[7] and most of the children were left out to bifurcated and non-uniform legislative framework developed by the States. During this phase, children's rights and juvenile justice was being debated at the international level as well.

On 20th November 1959, General Assembly of the United Nations laid down ten principles to enable children irrespective of race, colour, sex, language, religion or origin, to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom of dignity.[8] This was followed by the adoption of the Beijing Rules, 1985 (United Nations Standard Minimum Rules of the Administration of Juvenile Justice) to which India was a signatory. Subsequently, India enacted the Juvenile Justice Act, 1986. However, the end of the century witnessed major changes in the international understanding of the needs of the children and therefore, the Convention on the Rights of Children was adopted in 1989.[9] It took a decade for incorporating the conventional principles into the municipal law of India. However, this incorporation was a major leap forward in terms of adjudication of the juvenile delinquents and their protection.

The Juvenile Justice Act, 2000 (hereinafter the *Act of 2000*) forms the foundational basis for the Act of 2015 and many provisions in the latter Act have been incorporated from the former. The Act of 2000 derived its genesis and legislative intent from the fact of rehabilitating children into the mainstream society by protecting their interests and promoting their welfare while adjudicating cases related to delinquency. The enactment focused on the rights-based approach towards while *consolidating and amending the law relating to juveniles in conflict with law and children in need of care and protection*.[10]

The Juvenile Justice (Care and Protection of Children) Act, 2015 has been enacted to further the best interest of child and protection of the child from any untoward situation that might arise in his or her life owing to the vulnerabilities that a child might face. This study is focused on understanding the nuances of operationalisation of the juvenile justice system in India while also delineating the issues that the system faces and prompting a new modus operandi or formulating a new philosophical foundation of juvenile justice system.

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[6] Preamble, The Children Act, Act No. 60 of 1960 (Repealed).

[7] *It extends to all the Union territories*. – Section 1(2) of The Children Act, Act No. 60 of 1960 (Repealed)

[8] Declaration of the Rights of the Child, Nov. 20, 1959, A/RES/14/1386

[9] United Nations Convention on the Rights of the Child, Nov. 20, 1989, U.N.G.A. Res. 44/25.

[10] Ved Kumari, *Quagmire of Age Issues under the Juvenile Justice Act: From Inclusion to Exclusion*, JOURNAL OF THE INDIAN LAW INSTITUTE, (2)51, 2009, 163.

A child has been defined under the Act of 2015 as

"child" means a person who has not completed eighteen years of age;[11]

"child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;[12]

The Act of 2015 at the outset delineates the principles of care and protection of children to be adopted by the officials involved in the protection of children while implementing the Act and interacting with children through channels provided for in the juvenile justice system.[13] These principles are the guiding factor for the administration of the Act of 2015 and the juvenile justice system of the country. This part of the Act delineates sixteen principles which the officials must follow. These principles are reflective of the kind of attitude that has to be adopted while dealing with children, and especially those in conflict with law.

Chapter III deals with the Juvenile Justice Board and its composition, procedure of production of child in conflict with law before the Juvenile Justice Board, powers, functions and responsibilities of the Board, procedure to be followed by a Magistrate who has not been empowered under the Act. Chapter IV deals with the procedure in relation to children in conflict with law with regard to apprehension of child alleged to be in conflict with law and inquiry.

According to Sec.19 of the JJ Act, 2015, the Children's Court if decides that there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973, pass appropriate orders, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere. If the Children's Court decides that there is no need for trial in such cases, may conduct an inquiry as a Board and pass appropriate orders. The Children's court further shall ensure that the final order in such cases shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a Social Worker. The Children's Court shall also ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years, and thereafter, the person shall be transferred to a jail. When the child in conflict with law attains the age of twenty-one years and is yet to complete the terms of stay, the Children's Court shall provide for a follow up to evaluate the reformative changes in the

[11] Clause (12), S. (2), Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).
[12] Clause (13), S. (2), Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).
[13] S. 3, Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016).

child. Further, the Board shall make an order directing the police or the Children's court to its own register for destruction of relevant records of conviction after the expiry of the period of appeal or after a reasonable period. In case of runaway child in conflict with law, after production before the Board, it shall ascertain the reasons such act of the child.

The JJ Act, 2015 incorporated the Principles laid down in the Beijing Rules and UNCRC guidelines for prescribing a juvenile justice procedure, which is completely different from the criminal justice procedure. This has brought immense responsibility upon the government, especially the Executive to take adequate measures and effective steps to ensure that not only the law is complied with in its spirit but simultaneously serve the *best interest* of the child in conflict with law. But the children in conflict with law have not been able to benefit from the existing mechanism. They are pulled between rehabilitative features of the Act and the criminal jurisprudential approach of the officials thereby limiting their growth and also affecting their effective rehabilitation. This when read with the specific responsibilities upon the duty bearers needs objective analysis as to how the law is translating into reality.

Literature Review

Literature on the juvenile justice system and its various facets is amply available. There have been debates on whether the reconciliation of the system of welfare with the system of adjudication under the scheme is as effective as it is portrayed to be. There have also been varied opinion about the age of the juvenile and his/ her treatment as an adult in cases of heinous crimes.

Prof. B.B. Pande has written about the challenge that the juvenile justice system has faced in India while discussing the need for and the reason behind the implementing the Act of 2015. He has pointed out the challenges to the then existent juvenile justice system and how the legislature and the judiciary, alike, challenged the prevalent notions of the juvenile justice system and pushed for reforms in the system. This article discusses at length, the concern raised by the judiciary through its judgements on the need for making the system more punishable than it was and why the juveniles committing heinous crimes should be tried like adults.[14]

Prof. Ved Kumari undertakes a critical analysis of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 to understand the extent of effectiveness of the redefined scheme and the challenges that the new procedural changes may bring for the children involved in the juvenile justice system. Reference is made to the provisions related to sentencing and

[14] B.B. Pande, *'Bad' Juveniles and the 'Worst' Juvenile Justice Law? The Second Challenge to Juvenile Justice Law in Darga Ram v. State of Rajasthan*, 57(1), JOURNAL OF INDIAN LAW INSTITUTE, 2015.

distinction among children on the basis of age alongside contradiction of the rights of the child in other international documents. This paper further highlights the need for a scheme whereby the scientific data available in the contemporary scenario should be used by the legislators in formulating the law. The scheme of the Act of 2015 completely oversees any such advancements and therefore, there is a need to revisit the scheme of the Act of 2015.[15] In a similar vein the author had taken a vehement stand against the scheme of the Act of 2015 during its inception in the form of a Bill.[16] She has also critically analysed the provisions of the Act in another article to highlight the deficiencies of the Act of 2015. She highlights the procedural flaws in that Act and also the constitutional violations that the new law brings with itself.[17]

Gaurav Pillai and Shrikrishna Upadhyay have analysed the mechanism proposed under the Act of 2015 from the perspective of how instead of overhauling the entire system, there was a need for effective implementation of the Act of 2000. They highlight the procedural flaws associated with the assessment by the Juvenile Justice Board, the Juvenile Court, and the violation of the doctrine of fresh start. They argue further that the rehabilitative scheme of the Act of 2015 needs to be reconciled with indeterminate sentencing (which is not currently the scheme of the Act) scheme to provide a solution to the concerns of the public on one-hand and the concerns of the child to be rehabilitated on the other.[18]

Justice Krishna Iyer has also pointed out the dilapidated conditions of the institutions that have been formulated under the Statutes regulating juvenile justice system in India.[19] The report of the Parliamentary Standing Committee of Human Resource Development constituted for studying the Bill of 2014 is also a detailed study about the nature of the Act of 2015. This document gives ample evidence with respect to why the new Act was enacted and the inherent issues therewith. The Report highlights some of the issues that have always been relevant with

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[15] Ved Kumari, *The Juvenile Justice Act 2015 – A Critical Understanding*, 58(1), JOURNAL OF INDIAN LAW INSTITUTE, 83 (2016).
[16] Ved Kumari, *Juvenile Justice Bill 2014 – A Regressive Step*, 56(3), JOURNAL OF INDIAN LAW INSTITUTE, 303 (2014).
[17] Ved Kumari, *Juvenile Justice Act 2015 – Critical Understanding*, 58(1), JOURNAL OF INDIAN LAW INSTITUTE, 83 (2016).
[18] Gaurav Pillai & Shrikrishna Upadhyay, *Juvenile Maturity and Heinous Crimes: A Re-look at Juvenile Justice Policy in India*, 10 NUJS L. REV. 49 (2017).
[19] Justice V. R. Krishna Iyer, *Jurisprudence of Juvenile Justice: A Preambular Perspectives*, International Conference on Shaping the Future by Law: Children, Environment and Human Health, 1994, http://14.139.60.114:8080/jspui/bitstream/123456789/1225/1/008_Jurisprudence%20of%20Juvenile%20Justice.pdf.

respect to the juvenile justice system in India and some of the concerns from the report form the foundation for this study.[20]

In her book, The Juvenile Justice System in India: From Welfare to Rights[21] Prof. Ved Kumari explores the difficulties of the Juvenile Justice System in India from a multi-dimensional perspective. The book provides a comprehensive understanding of the systemic issues, that the juvenile justice system faces and strategies to overcome these impediments. In her another book, she studies the Act of 2015 from the point of view of the international developments in the juvenile justice system and related jurisprudence. She highlights the need for compliance with the principles enshrined in the Act and how there is need for the institutions to follow these principles for ensuring the basic needs of the children protected under the Act of 2015.[22]

An important contribution to the study of juvenile justice system across the United States by Prof. Barry C. Feld. In his two seminal works – Bad Kids: Race and the Transformation of the Juvenile Court[23] and The Evolution of the Juvenile Court,[24] the author dwells deeper into the issues surrounding the juvenile courts. In the latter books he discusses how various forms of beliefs shape the understanding about the juvenile courts and foster their progress and evolution accordingly. He further discusses (in the latter book) the historically evolution of the juvenile courts and the approach of the courts in the twentieth century. In that he highlights the ideological shift from one where the juvenile delinquents were considered dependent to one where now they are considered as criminals and autonomous. This evolution has strengthened the punitive grip of courts on these kids.

At the international level also, a concern has been raised by academicians for a very long time about the jurisprudential basis for the juvenile courts and their inability to effectively reconcile the roles they have to play since their genesis.

Statement of Problem/ Problem Profile

The Act of 2015 is a child friendly procedure aimed at rehabilitation of the child. The Board, therefore, has to deal with juvenile delinquency from a point of view, which is entirely different from the procedure prescribed for adults under the Code of Criminal Procedure. Necessarily,

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[20] Department-Related Parliamentary Standing Committee on Human Resource Development, Rajya Sabha, *The Juvenile Justice (Care and Protection of Children) Bill, 2014*, 246th Report, (2015).
[21] Ved Kumari, THE JUVENILE JUSTICE SYSTEM IN INDIA: FROM WELFARE TO RIGHTS (Oxford University Press, 2010).
[22] Ved Kumari, THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015 - CRITICAL ANALYSIS (Universal Law Publishing, 2017).
[23] Barry C. Feld, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT (Oxford University Press, 1999).
[24] Barry C. Feld, THE EVOLUTION OF THE JUVENILE COURT (New York University Press, 2017).

the Principal Magistrate, who is a member of the judicial service and is used to the provisions of the Code, has to undergo a complete mental metamorphosis and attitudinal transformation while discharging his or her duties under the Act of 2015. The two Members (who comprise the Juvenile Justice Board), who probably have little legal experience, have to blend their expertise in the field of social welfare with the legal parameters to effect solutions, which are rehabilitative.

The review of literature identifies gross violation of the constitutional principles and the internationally accepted principles for the administration of the juvenile justice system under the JJ Act, 2015. The literature review also brings to fore systemic issues which have not been studied in a comprehensive manner. There is also a dichotomy that the judges face while dealing with the cases involving juvenile, but only limited research in this area has been undertaken and hitherto no research has been undertaken in the Indian context. The reports of various institutions also point towards a juvenile justice system which has not been able to achieve its objectives. This gap in the research and the systemic issues associated with the juvenile justice system in India is the vantage point for this research. The research would try to find an answer to these issues.

Objectives of the Study

a. To study the juvenile justice system with reference to the children in conflict with law in the State of Jharkhand.
b. To undertake empirical study of the cases registered with or brought before; disposed off and pending before JJBs in Jharkhand:
    i. to classify them as per Sec.18 of the JJ Act
    ii. to study the procedure adopted by the Board in cases where such juveniles absconded:
    iii. to study the time-taken in disposal and identification of delays, if any
    iv. to study effective implementation of the rehabilitation and reformative measures of the children in conflict with law
    v. to study the cases where JJB transferred the juveniles lodged in jails
c. To study the role played by SJPU in the effective implementation of the JJ Act, 2015 in the cases registered with or brought before; disposed off, and pending before JJBs between in Jharkhand.
d. To study the dilemma faced by the judges presiding the juvenile justice board.

e. To make a comparative study of the Indian juvenile justice system with the juvenile justice systems of the Belgium, Netherlands, and South Africa.
f. To study the resource allocation in terms of financial contribution to the system and the issues associated with limited resource availability

Scope and Limitations of the Study

This study is limited to children in conflict with law and the juvenile justice administration system in Jharkhand. The study also deals with the procedures followed in terms of juveniles who committed heinous crime and have been transferred to the criminal justice system.

The sample for empirical study is limited to cases registered with or brought before; disposed off and pending before JJBs in Jharkhand.

The study will make a comparative study of the Indian juvenile justice system with the systems of Belgium, Netherlands, and South Africa. The countries are among the top 15 performers in terms of Access to Justice to children as per the 2016 ranking by the Child Rights International Network.[25] Also, the countries are mixed in terms of the economy they represent, thereby providing a more objective approach towards comparative study. Some countries such as South Africa fare much worse than India in terms of their economic outlook.[26]

Research Questions & Hypotheses

a. Whether the juvenile justice system with reference to the children in conflict with law in the State of Jharkhand is in compliance with the principles and the procedures laid down in the JJ Act, 2015?
b. Whether the functioning of the JJBs in the State of Jharkhand are in compliance with the principles and the procedures laid down in the JJ Act, 2015?
c. Whether the working of SJPU in the State of Jharkhand are in compliance with principles and the procedures laid down in the JJ Act, 2015?
d. What are the difficulties that the judges face while presiding cases in the Juvenile Justice Board?
e. Whether the Indian juvenile justice system with the juvenile justice systems is performing better in comparison to Belgium, Netherlands, and South Africa?[27]

[25] Child Rights International Network, *Rights, Remedies & Representation: Global Report on Access to Justice for Children*, 2016, available at - https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf
[26] International Monetary Fund, *World Economic Outlook Report*, 2020.
[27] The countries are among the top 15 performers in terms of Access to Justice to children as per the 2016 ranking by the Child Rights International Network. Also, the countries are mixed in terms of the economy they represent, thereby providing a more objective approach towards comparative study. Some countries such as Latvia and South

Hypothesis

a. The Juvenile Justice Board in Jharkhand has effectively (in compliance with the principles) and in a time-bound manner (as prescribed by the law) disposed off all the cases that have come before it.
b. The Special Juvenile Police Unit is working effectively and is operational in all the districts of the State of Jharkhand and have facilitated the rehabilitation of children in compliance with the principles of Act of 2015.
c. Judges face a significant dichotomy while presiding the cases in the Juvenile Justice Board between the use of criminal law jurisprudence and juvenile justice jurisprudence.

Significance of Study

The study is significant for following reasons –

1. First, it would provide a comprehensive understanding about the juvenile justice system in Jharkhand alongside real-time data since the enactment of the Act of 2015.
2. Second, it would help in understanding the extent of individualised rehabilitative scheme implemented for the children in conflict with law in the State.
3. Third, this study would help in identifying the difficulties faced by the judges while presiding over cases in the juvenile justice board.

Research Methodology

Research Design – This research will use both, qualitative and quantitative methods.

Quantitative Study:

The study will use quantitative data in the following respects –

1. Collection of data about the various institutional arrangements under the JJ Act, 2015 such as the Special Juvenile Police Unit (S.107) and Juvenile Justice Board (S.4).
2. Collection and analysis of data about the cases handled by these institutions.
3. Collection and analysis of data about the allocation of funds to the Government of Jharkhand by the Central Government under the Integrated Child Development Scheme (ICPS).
4. Collection of data about the utilisation of funds in the State of Jharkhand with respect to juvenile justice system.

Africa fare much worse than India in terms of their economic outlook. *See*, International Monetary Fund, *World Economic Outlook Report*, 2020; Child Rights International Network, *Rights, Remedies & Representation: Global Report on Access to Justice for Children*, 2016, available at - https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf (last visited on 02 September, 2020).

5. Collection of other relevant data, as the study in its developmental stage may find befitting.

Qualitative Study:

The qualitative, doctrinal, study would focus on theory and practice of the juvenile justice system in India and across the globe. It will include rights-based approach to the juvenile justice system, constitutional, criminal, and philosophical approach to the juvenile justice system and its development in India, translation of the objectives of the existing juvenile justice system into reality by the executive, and understanding the nuances of stakeholder attitude towards the implementation of the juvenile justice system in India. It is important to notice Trotsky's aphorism that, "but quantitative changes beyond certain limits become converted into qualitative".[28]

Research Tools: Interview schedule and Case-studies would be the tools for research.

Ethics in compliance of research:

This research would be undertaken in full compliance with the ethics of research with respect to the following aspects –

- ➢ Informed and voluntary consent
- ➢ No harm principle to any entity whether natural or legal
- ➢ Social beneficence
- ➢ Mutual respect principle
- ➢ Confidentiality
- ➢ Public spirit
- ➢ Fundamental duties of the citizens

[28] Leon Trotsky, ABC OF MATERIALIST DIALECTICS (1939).

Plan of the Study

The following plan of study is proposed:

Chapter I – Introduction

Chapter II – Historical Perspective

Chapter III – International Scenario

Chapter IV – Constitutional, and Legislative Measures related to Juvenile Justice System in India

Chapter V – Administration of Juvenile Justice in India

Chapter VI – Empirical study and Children in Conflict with Law in State of Jharkhand

Chapter VII – Conclusion and Suggestions

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